

**IN THE
SUPREME COURT
OF
THE STATE OF ILLINOIS**

Order entered December 16, 2010.

(Deleted material is struck through and new material is underscored.)

Effective immediately, Supreme Court Rules 204, 760, 777, and 778 are amended, and effective January 1, 2011, Supreme Court Rule 239 is amended, as follows.

Amended Rule 204

Rule 204. Compelling Appearance of Deponent

(a) Action Pending in This State.

(1) *Subpoenas.* Except as provided in paragraph (c) hereof, (i) the clerk of the court shall issue subpoenas on request; or (ii) subpoenas may be issued by an attorney admitted to practice in the State of Illinois who is currently counsel of record in the pending action. The subpoena may command the person to whom it is directed to produce documents or tangible things which constitute or contain evidence relating to any of the matters within the scope of the examination permitted under these rules.

(2) *Service of Subpoenas.* A deponent shall respond to any lawful subpoena of which the deponent has actual knowledge, if payment of the fee and mileage has been tendered. Service of a subpoena by mail may be proved prima facie by a return receipt showing delivery to the deponent or his authorized agent by certified or registered mail at least seven days before the date on which appearance is required and an affidavit showing that the mailing was prepaid and was addressed to the deponent, restricted delivery, return receipt requested, showing to whom, date and address of delivery, with a check or money order for the fee and mileage enclosed.

(3) *Notice to Parties, et al.* Service of notice of the taking of the deposition of a party or person who is currently an officer, director, or employee of a party is sufficient to require the appearance of the deponent and the production of any documents or tangible things listed in the notice.

(4) *Production of Documents in Lieu of Appearance of Deponent.* The notice, order or stipulation to take a deposition may specify that the appearance of the deponent is excused, and that no deposition will be taken, if copies of specified documents or tangible things are served on the party or attorney requesting the same by a date certain. That party or attorney shall serve all requesting parties of record at least three days prior to the scheduled deposition, with true and complete copies of all documents, and shall make available for inspection tangible things, or other materials furnished, and shall file a certificate of compliance with the court. Unless otherwise ordered or agreed, reasonable charges by the deponent for production in accordance with this procedure shall be paid by the party requesting the same, and all other parties shall pay reasonable copying and delivery charges for materials they receive. A copy of any subpoena issued in connection with such a deposition shall be attached to the notice and immediately filed with the court, not less than 14 days prior to the scheduled deposition. The use of this procedure shall not bar the taking of any person's deposition or limit the scope of same.

(b) Action Pending in Another State, Territory, or Country. Any officer or person authorized by the laws of another State, territory, or country to take any deposition in this State, with or without a commission, in any action pending in a court of that State, territory, or country may petition the circuit court in the county in which the deponent resides or is employed or transacts business in person or is found for a subpoena to compel the appearance of the deponent or for an order to compel the giving of testimony by the deponent. The court may hear and act upon the petition with or without notice as the court directs.

(c) Depositions of Physicians. The discovery depositions of nonparty physicians being deposed in their professional capacity may be taken only with the agreement of the parties and the subsequent consent of the deponent or under a subpoena issued upon order of court. A party shall pay a reasonable fee to a physician for the time he or she will spend testifying at any such deposition. Unless the physician was retained by a party for the purpose of rendering an opinion at trial, or unless otherwise ordered by the court, the fee shall

be paid by the party at whose instance the deposition is taken.

(d) Noncompliance by Nonparties: Body Attachment.

(1) An order of body attachment upon a nonparty for noncompliance with a discovery order or subpoena shall not issue without proof of personal service of the rule to show cause or order of contempt upon the nonparty.

(2) The service of the rule to show cause or order of contempt upon the nonparty, except when the rule or order is initiated by the court, shall include a copy of the petition for rule and the discovery order or subpoena which is the basis for the petition for rule.

(3) The service of the rule to show cause or order of contempt upon the nonparty shall be made in the same manner as service of summons provided for under sections 2–202, 2–203(a)(1) and 2–203.1 of the Code of Civil Procedure.

Amended June 23, 1967, and amended October 21, 1969, effective January 1, 1970; amended September 29, 1978, effective November 1, 1978; amended July 1, 1985, effective August 1, 1985; amended November 21, 1988, effective January 1, 1989; amended June 19, 1989, effective August 1, 1989; amended June 1, 1995, effective January 1, 1996; amended June 11, 2009, effective immediately; amended December 16, 2010, effective immediately.

Amended Rule 239

Rule 239. Instructions

(a) Use of IPI Instruction; Requirements of Other Instructions. Whenever Illinois Pattern Jury Instructions (IPI) contains an instruction applicable in a civil case, giving due consideration to the facts and the prevailing law, and the court determines that the jury should be instructed on the subject, the IPI instruction shall be used, unless the court determines that it does not accurately state the law. Whenever IPI does not contain an instruction on a subject on which the court determines that the jury should be instructed, the instruction given in that subject should be simple, brief, impartial, and free from argument.

(b) Court's Instructions. At any time before or during the trial, the court may direct counsel to prepare designated instructions. Counsel shall comply with the direction, and copies of instructions so prepared shall be marked "Court's Instruction." Counsel may object at the conference on instructions to any instruction prepared at the

court's direction, regardless of who prepared it, and the court shall rule on these objections as well as objections to other instructions. The grounds of the objections shall be particularly specified.

(c) Procedure. Each instruction shall be accompanied by a copy, and a copy shall be delivered to opposing counsel. In addition to numbering the copies and indicating who tendered them, as required by section 2-1107 of the Code of Civil Procedure, the copy shall contain a notation substantially as follows:

“IPI No. _____” or “IPI No. _____ Modified” or “Not in IPI” as the case may be. All objections made at the conference and the rulings thereon shall be shown in the report of proceedings. The original instructions given by the court to the jury shall be taken by the jury to the jury room.

(d) Instructions Before Opening Statements. After the jury is selected and before opening statements, the court may orally instruct the jury as follows:

(i) On cautionary or preliminary matters, including, but not limited to, the burden of proof, the believability of witnesses, and the receipt of evidence for a limited purpose.

(ii) On the substantive law applicable to the case, including, but not limited to, the elements of the claim or affirmative defense.

(e) Instructions After the Close of Evidence. After the close of evidence, the court shall repeat any applicable instructions given to the jury before opening statements and instruct the jury on procedural issues and the substantive law applicable to the case, including, but not limited to, the elements of the claim or affirmative defense. The court may, in its discretion, read the instructions to the jury prior to closing argument. Whether or not the instructions are read prior to closing argument, the court shall read the instructions to the jury following closing argument and ~~shall at that time~~ may, in its discretion, distribute a written copy of the instructions to each juror. Jurors shall not be given a written copy of the jury instructions prior to counsel concluding closing argument.

(f) Instructions During Trial. Nothing in this rule is intended to restrict the court's authority to give any appropriate instruction during the course of the trial.

Amended May 28, 1982, effective July 1, 1982; amended October 1, 1998, effective January 1, 1999; amended June 11, 2009, effective September 1, 2009; amended December 16, 2010, effective January 1,

2011.

Amended Rule 760

Rule 760. Appointment of Medical Experts

(1) In any proceeding under Rules 757, 758, or 759 or 770, upon motion of the Administrator or the attorney, the court may order a mental or physical examination of the attorney. Such examination shall be conducted by a member of a panel of physicians chosen for their special qualifications by the Administrative Office of the Illinois Courts.

(2) The examining physician shall prepare a report of his examination, and copies of the report shall be given to the court, the Hearing Board, the Administrator, and the attorney.

(3) The Administrator, the attorney, or the Hearing Board may call the examining physician to testify. A physician so called shall be subject to cross-examination.

(4) The cost of the examination and the witness fees of the physician, if called to testify, shall be paid from the Disciplinary Fund.

Adopted March 30, 1973, effective April 1, 1973; amended September 8, 1975, effective October 1, 1975; amended March 19, 1997, effective April 15, 1997; amended December 16, 2010, effective immediately.

Amended Rule 777

Rule 777. Registration of, and Disciplinary Proceedings Relating to, Foreign Legal Consultants

(a) Supervision and Control of Foreign Legal Consultants. The registration of, and disciplinary proceedings affecting, persons who are licensed (pursuant to Rule 712) to practice as foreign legal consultants shall be subject to the supreme court rules (Rule 751 *et seq.*) and to the rules of the Attorney Registration and Disciplinary Commission relating to the registration and discipline of attorneys. As used in those rules, the terms “attorney” and “attorney and counselor at law” shall include foreign legal consultants except to the extent that those rules concern matters unrelated to the permissible activities of foreign legal consultants.

(b) Issuance of Subpoenas by Clerk Relating to Investigation

of Foreign Legal Consultants. Upon application by the Administrator or an Inquiry Board, disclosing that the Administrator or Inquiry Board is conducting an investigation of either professional misconduct on the part of a foreign legal consultant or the unlawful practice of law by a foreign legal consultant, or of a Hearing Board that it is conducting a hearing relating thereto, or upon application by a respondent, the clerk of this court shall be empowered to issue subpoenas for the attendance of witnesses and the production of books and papers before the Administrator or Inquiry Board or Hearing Board.

(c) Issuance of Subpoenas by Clerk Relating to Investigation of Wrongfully Representing Himself as a Foreign Legal Consultant. Upon application by the Administrator or an Inquiry Board disclosing that it has reason to believe that a person, firm or corporation other than a foreign legal consultant is unlawfully practicing or assuming to practice law as a foreign legal consultant and that it is conducting an investigation thereof, or of a Hearing Board that it is conducting a hearing relating thereto, or upon application by any respondent, the clerk of this court shall be empowered to issue subpoenas for the attendance of witnesses and production of books and papers before the Administrator or Inquiry Board or Hearing Board.

(d) Taking Evidence. The Administrator or Inquiry Board conducting an investigation and any Hearing Board conducting a hearing pursuant to this rule is empowered to take and transcribe the evidence of witnesses, who shall be sworn by any person authorized by law to administer oaths.

(e) Disciplinary Procedure. Disciplinary proceedings and proceedings under Rules 757, 758, or 759 ~~or 770~~ against any foreign legal consultant shall be initiated and conducted in the manner and by the same agencies as prescribed by law for such proceedings against those admitted as attorneys.

Adopted December 7, 1990, effective immediately; amended December 16, 2010, effective immediately.

Amended Rule 778

Rule 778. Retention of Records by Administrator

(a) Retention of Records. The Administrator is permitted to

retain the record of investigation for all matters resulting in the imposition of discipline as defined by Rule ~~771~~ 770, or for investigations which have been stayed or deferred by the transfer of the attorney to disability inactive status.

(b) Expungement. The Administrator shall expunge the record of an investigation concluded by dismissal or closure by the Administrator or Inquiry Board three years after the disposition of the investigation, unless deferral of expunction is warranted under paragraph (c). Expungement shall consist of the Administrator's destruction of the investigative file and other related materials maintained by the Administrator relating to the attorney, including any computer record identifying the attorney as a subject of an investigation.

(c) Deferral of Expungement of Investigative Materials. Expungement of an investigative file and all related materials under paragraph (b) shall be deferred until the passage of three years from the later of the following events:

- (1) the conclusion of any pending disciplinary or disability proceeding related to the attorney before the Hearing or Review Boards or the Court; or
- (2) the termination of any previously imposed sanction (including suspension, disbarment or probation) or the restoration of the attorney from disability inactive to active status.

Adopted January 5, 1993, effective immediately; amended June 29, 1999, effective November 1, 1999; amended December 16, 2010, effective immediately.